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13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN FRANCISCO DIVISION**

16 MARC OPPERMAN, et al.,

17 Plaintiffs,

18 v.

19 PATH, INC., et al.

20 Defendants.

Case No. 13-cv-00453-JST

CLASS ACTION

**STIPULATION AND [PROPOSED] ORDER
TO PRESERVE APPELLATE RIGHTS OF
PREVIOUSLY ASSERTED CLAIMS**

Hernandez v. Path, Inc., No. 12-cv-1515-JST
Pirozzi v. Apple Inc., No. 12-cv-1529-JST
Gutierrez v. Instagram, Inc., No. 12-cv-6550-JST
Espitia v. Hipster, Inc., No. 4:13-cv-432-JST
 (collectively, the “Related Actions”)

STIPULATION

1
2 Whereas, Plaintiffs Allen Beuershausen, Giuliana Biondi, Lauren Carter, Stephen Dean,
3 Stephanie Dennis-Cooley, Jason Green, Claire Hodgins, Gentry Hoffman, Rachele King, Nirali
4 Mandalaywala, Claire Moses, Judy Paul, Maria Pirozzi, Theda Sandiford and Greg Varner,
5 individually and on behalf of all others similarly situated (“Plaintiffs”) in the above-captioned
6 matters filed a Consolidated Amended Class Action Complaint on September 3, 2013.

7 Whereas, Defendants Apple, Inc., Chillingo Ltd., Facebook, Inc., Instagram, LLC,
8 Foursquare Labs, Inc., Kik Interactive, Inc., Twitter, Inc., Electronic Arts, Inc., Path, Inc., Yelp!
9 Inc., Foodspotting Inc., Gowalla Inc., Rovio Entertainment Ltd. s/h/a Rovio Mobile Oy, Zeptolab
10 UK Limited (“Defendants”) filed motions to dismiss on October 18, 2013.

11 Whereas, those motions were granted in part and denied in part by an order of this Court
12 dated May 14, 2014, which also granted Plaintiffs leave to amend all claims that were dismissed.

13 Whereas, Plaintiffs intend to narrow the claims at issue in the case, but seek to preserve
14 their right to appellate review of the dismissal of the claims pled in their Consolidated Amended
15 Class Action Complaint. Rather than repleading all claims, which would require Defendants to
16 move to dismiss and the Court to rule on the motion, the parties seek to avoid that unnecessary
17 burden by entering into this stipulation.

18 Therefore, Pursuant to Civil L.R. 7-12, Plaintiffs and Defendants stipulate as follows:

19 1. With the exception of claims included in Plaintiffs’ forthcoming amended
20 consolidated complaint, all claims pled in the First Consolidated Amended Complaint filed on
21 September 3, 2013 and attached hereto as Exhibit A (with the exception of Count XXV,
22 Violations of RICO ¶¶ 723-805, as asserted against all defendants, and Count XXVI, Secondary
23 and Vicarious Liability, Vicarious Liability - Apple as App Defendants' Agent ¶¶806-808, as
24 asserted against App Defendants only, which Plaintiffs have voluntarily dismissed) are deemed
25 to have been repled in a timely and proper manner following the Court’s order of May 14, 2014.

26 The Court’s order of May 14, 2014 , however, shall apply to all such claims, and all such claims
27 not included in Plaintiffs’ forthcoming amended consolidated complaint shall be deemed to be
28 involuntarily dismissed with prejudice. For purposes of appeal, the factual allegations in the

1 First Consolidated Amended Complaint will govern the sufficiency of any and all claims not
2 included in Plaintiffs' forthcoming amended consolidated complaint.

3 2. The Court's order of May 14, 2014 will be deemed to apply to any such claim,
4 but, for purposes of appellate review, dismissal of claims that are not included in Plaintiffs'
5 forthcoming amended consolidated complaint will be deemed to be without leave to amend.

6 3. For the sake of clarity, the parties agree that Plaintiffs will have the right to seek
7 appellate review of the dismissal of claims pled in the First Consolidated Amended Complaint,
8 subject to the exceptions set forth in the numbered paragraph one above, notwithstanding that
9 they are not included in their forthcoming amended complaint.

10 Respectfully submitted,

11 Dated: June 27, 2014

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[PROPOSED] ORDER

Pursuant to the stipulation of the parties and good cause appearing thereof, the stipulation as between Plaintiffs Opperman, et al. (“Plaintiffs”) and Defendants Apple, Inc., Chillingo Ltd., Facebook, Inc., Instagram, LLC, Foursquare Labs, Inc., Kik Interactive, Inc., Twitter, Inc., Electronic Arts, Inc., Path, Inc., Yelp! Inc., Foodspotting Inc., Gowalla Inc., Rovio Entertainment Ltd. s/h/a Rovio Mobile Oy, Zeptolab UK Limited (“Defendants”) through their respective counsel is granted.

With the exception of claims included in Plaintiffs’ forthcoming amended consolidated complaint, all claims pled in the First Consolidated Amended Complaint filed on September 3, 2013 and attached hereto as Exhibit A (with the exception of Count XXV, Violations of RICO ¶¶ 723-805, as asserted against all defendants, and Count XXVI, Secondary and Vicarious Liability, Vicarious Liability - Apple as App Defendants' Agent ¶¶806-808, as asserted against App Defendants only, which Plaintiffs have voluntarily dismissed) are deemed to have been repled in a timely and proper manner following the Court’s order of May 14, 2014. The Court’s order of May 14, 2014 , however, shall apply to all such claims, and all such claims not included in Plaintiffs’ forthcoming amended consolidated complaint shall be deemed to be involuntarily dismissed with prejudice. For purposes of appeal, the factual allegations in the First Consolidated Amended Complaint will govern the sufficiency of any and all claims not included in Plaintiffs’ forthcoming amended consolidated complaint.

The Court’s order of May 14, 2014 shall apply to any such claim, but, for purposes of appellate review, dismissal of claims that are not included in Plaintiffs’ forthcoming amended consolidated complaint will be deemed to be without leave to amend.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2014

The Honorable Jon S. Tigar
United States District Judge

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I attest that concurrence in the filing of this document has been obtained from the other signatories listed above.

Dated: June 27, 2014

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CERTIFICATE OF SERVICE

I certify that on this day, June 27, 2014, I caused a copy of this STIPULATION TO PRESERVE APPELLATE RIGHTS OF PREVIOUSLY ASSERTED CLAIMS and Proposed Order to be served on all counsel of record via the CM/ECF system.

KERR & WAGSTAFFE LLP

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